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No. 89-30

In the Supreme Court of the United States

OCTOBER TERM, 1989

JANICE ENDSLEY, EXECUTRIX OF THE ESTATE OF WILLIAM ENDSLEY, DECEASED AND JAMES WEYCKER,
Petitioners,

vs.

JOHN YOUNG,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals For the Sixth Circuit

PAUL M. DOUCHER, ESQ.
(Counsel of Record)
WILES, DOUCHER, VAN BUREN & BOYLE CO., L.P.A.
115 West Main Street
Columbus, Ohio 43215-5043
(614) 221-5216
Attorney for Respondent

Of Counsel:
MICHAEL J. KELLEY, ESQ.
JOHN T. KELLY, ESQ.

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

BEST AVAILABLE COPY

QUESTION PRESENTED

I. FEDERAL ADMIRALTY JURISDICTION EXISTS UNDER 46 U.S.C. SECTION 181, ET SEQ. (HEREINAFTER THE LIMITATIONS ACT) IF BOTH THE LOCALITY AND NEXUS TESTS ARE SATISFIED REGARDLESS OF THE CHARACTER OF THE VESSEL AND HENCE, THERE IS NO CONFLICT BETWEEN THE SIXTH AND SEVENTH CIRCUITS

LIST OF PARTIES

The parties to the proceedings below were the petitioners, Janice Endsley, Executrix of the Estate of William Endsley and James Weycker and the respondent was John Young.

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BRIEF IN OPPOSITION

The Respondent, John Young, respectfully prays that a Writ of Certiorari not be issued to review the Judgment and Opinion of the United States Court of Appeals for the Sixth Circuit entered in the above-entitled proceeding on April 11, 1989.

STATEMENT OF THE CASE

This case concerns a gasoline fire and explosion occurring upon Respondent Young's twenty (20) foot fishing boat shortly after taking on fuel at the Fox Haven Marina on Lake Erie. These men had fished together about a dozen times before the day in question, usually splitting the expenses. The incident occurred while the boat was navigating through a channel and back out into the main lake.

After being named as a Defendant in two (2) separate state court cases, Young filed a Petition seeking exoneration or limitation of liability under 46 U.S.C. Section 181, et seq. (hereinafter the "Limitations Act").

The District Court, after acknowledging binding Sixth Circuit case law holding that the Limitation Act applies to "any vessel", departed from that precedent deciding that pleasure boats are not "vessels" for purposes of 46 U.S.C. Section 183(a).

Young appealed to the Sixth Circuit Court of Appeals which reversed, holding that a pleasure boat is a "vessel" that *may* be entitled to limitation if other factual prerequisites were present. These were the issues to be determined by the District Court on remand.

Disagreeing with that determination, Janice Endsley, Executrix of the Estate of William Endsley and James Weycker have filed the instant Petition seeking a Writ of Certiorari.

REASONS WHY THE WRIT SHOULD NOT BE GRANTED

I.

Federal Admiralty Jurisdiction Exists Under 46 U.S.C. Section 181, Et Seq. (Hereinafter The Limitations Act) If Both The Locality And Nexus Tests Are Satisfied Regardless Of The Character Of The Vessel And Hence, There Is No Conflict Between The Sixth And Seventh Circuits

The determination made by the Sixth Circuit Court of Appeals from which the instant Petition arises, simply concludes that a pleasure boat is a "vessel" under the Limitations Act which *may* be entitled to limitation. That decision reversed the District Court which held that regardless of the locality of the incident and the nexus to traditional maritime activity, if that craft is a pleasure boat, it is not entitled to limitation, i.e., a pleasure boat is not a vessel.

The Petitioners herein now claim for the first time that no subject matter jurisdiction and hence no right to limitation exists when a pleasure craft is involved. As is plainly apparent from the Seventh Circuit's decision in *Complaint of Sisson* (7th Cir. 1989), 867 F.2d 341 at 350 (footnote 11), it was *not* considering the question here, as to whether a pleasure boat owner having satisfied both the nexus and locality tests may seek limitation. Nonetheless, Petitioners claim a conflict exists between *Sisson* and the Sixth Circuit's decision herein.

No subject matter jurisdiction existed in *Sisson* because the fire aboard the pleasure craft "Ultorian" occurred while the vessel was moored at an exclusively

pleasure craft marina and hence did not have a potentially disruptive impact on maritime commerce and also because the alleged "wrong", a defective washer and dryer, did not involve navigation.

Petitioners herein, attempting to find a conflict between the Circuits, cite *Sisson* for the proposition that any incident involving a pleasure craft is outside the subject matter jurisdiction of the Admiralty Courts. That is not the substance of *Sisson*. *Sisson* held that if both the locality and "nexus" test are satisfied, traditional Admiralty jurisdiction is conferred. By contrast, the Sixth Circuit's decision in *Young* (*In Re John Young, William Endsley, et al. v. John W. Young* (6th Cir. 1989), 872 F.2d 176, merely recognizes that a pleasure craft is a vessel under the Limitations Act which may be entitled to limitation if certain factual prerequisites are satisfied.

In this case, there is no question that under the traditional locality test alone, a federal district court sitting in Admiralty would have subject matter jurisdiction. The incident occurred on Lake Erie. In *Foremost Insurance Company v. Richardson* (1982), 457 U.S. 668, 102 S.Ct. 2654, 73 L.Ed. 2d 300 this Court, in reviewing the additional "nexus" test, considered and rejected the notion that traditional maritime activity must be exclusively commercial in nature (i.e., the pleasure boat exclusion) Justice Marshall, writing for the majority in *Foremost Ins.* stated at 674, 675:

> "The Federal interest in protecting maritime commerce cannot be adequately served if Admiralty jurisdiction is restricted to those individuals actually *engaged* in commercial maritime activity. This interest can be vindicated only if *all* operators of ves-

> sels on navigable waters are subject to uniform rules of conduct. The failure to recognize the breadth of this Federal interest ignores the potential effect of non-commercial maritime activity on maritime commerce." (Emphasis in original).

Specifically rejecting the commercial/pleasure distinction as controlling on the question of subject matter jurisdiction in Admiralty, the Court continued at 677:

> "In light of the need for uniform rules governing navigation, the potential impact on maritime commerce when two vessels collide on navigable waters, and the uncertainty and confusion that would necessarily accompany a jurisdictional test tied to the commercial use of a given boat, we hold that a complaint alleging a collision between two vessels on navigable waters properly states a claim within the Admiralty jurisdiction of the Federal Court."

This precisely rejects Petitioners' position to exclude pleasure vessels *per se* and also dashes the claimed conflict between the circuits. The existence of subject matter jurisdiction will necessarily depend on the determination of the traditional locality test in conjunction with the judicially imposed "nexus test" of *Executive Jet Aviation, Inc. v. City of Cleveland* (1972), 409 U.S. 249, 93 S.Ct. 493, 34 L.Ed. 2d 454. The Sixth Circuit in *Young* merely held that a pleasure boat is a "vessel" under the Limitations Act that *may* be entitled to its protection.

The claimed confusion cited by the Petitioners herein simply results by the acknowledging of this Court in *Foremost* that the scope of traditional Admiralty jurisdiction may be extended by the Limitations Act when, purely by virtue of the property damaged (a dock or

pier), the case would fall outside the scope of traditional maritime jurisdiction. This has absolutely nothing to do with the Sixth Circuit's decision in *Young* that a pleasure craft is a "vessel" for purposes of the Limitations Act and that such a vessel may be entitled to limitation if the traditional locality rule and the more recent "nexus test" are satisfied.

This case is simply a matter of statutory interpretation and fortunately, we are confronted with a clear statute. As stated by this Court in *Foremost Insurance* at 676:

> "Congress defines the term 'vessel', for the purpose of determining the scope of various shipping and maritime transportation laws, to include all types of waterborne vessels, without regard to whether they engage in commercial activity. See, e.g., 1 U.S.C. Section 3 ('vessel' includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water)."

Petitioners herein simply disagree with the *Foremost Insurance* case and are asking this Court to reconsider and to pronounce that contrary to the clear terms of the statute, a pleasure boat is not a "vessel".

Although an intriguing area of law, there is no reason for this Court to ponder its intricacies in the instant case when it has already determined that the commercial/pleasure craft distinction is inapplicable as to the existence of federal Admiralty jurisdiction. As held by this Court in *Foremost Ins.*, there is no justification for excluding pleasure vessels *per se* because, as here, an incident involving a navigating pleasure craft upon a nav-

igable waterway and the resulting potential for disruption of traditional maritime activity is just as great. This incident, although it involves a pleasure vessel, is still well within the bounds of traditional maritime activity. There is no question that the explosion occurred while Mr. Young's vessel was being navigated in the traditional sense upon a navigable waterway, Lake Erie. Petitioners herein, want this Court to restrict the scope of Admiralty jurisdiction to exclude any tort that concerns a non-commercial vessel despite the fact that both the locality and nexus requirements have been met. The policy rationale for uniform rules of navigation and liability mandate that all vessels, including pleasure craft be governed by the same rules of navigation and liabiiity so long as the vessel is engaged in traditional maritime activity upon a navigable waterway. The Court should not issue a writ to re-determine what it has already decided less than a decade ago.

Respectfully submitted,

WILES, DOUCHER, VAN BUREN
& BOYLE CO., L.P.A.
By PAUL MICHAEL DOUCHER, ESQ.
115 West Main Street
Columbus, Ohio 43215-5043
614/221-5216
Attorney for Respondent

Of Counsel:
MICHAEL J. KELLEY, ESQ.
JOHN T. KELLY, ESQ.

CERTIFICATE OF SERVICE

This is to certify that three copies of the foregoing Respondent's Brief in Opposition were served on September 21, 1989 by U.S. Mail, postage prepaid, upon the following counsel of record:

THOMAS J. MURRAY, ESQ.
Murray & Murray Co., L.P.A.
300 Central Avenue
Sandusky, Ohio 44870
Attorney for Petitioners